

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 RUDOLPH ROYBAL,

11 Petitioner,
12

13
14 vs.
15

16
17 KEVIN CHAPPELL, Warden of the
California State Prison at San Quentin,
18

19 Respondent.
20
21

Case 99cv2152-JM (KSC)
No.

DEATH PENALTY CASE

ORDER:

**(1) GRANTING REQUEST TO
RESET BRIEFING SCHEDULE;**

**(2) ISSUING BRIEFING SCHEDULE
ON PETITIONER'S APPLICATION
FOR STAY OF FEDERAL HABEAS
PROCEEDINGS; AND**

**(3) STAYING MAY 12, 2014 ORDER
RE BRIEFING SCHEDULE ON
REQUEST FOR EVIDENTIARY
HEARING**

22 On June 3, 2014, Petitioner filed an Ex Parte Application to Reset Briefing
23 Schedule Re His Request for an Evidentiary Hearing. (ECF No. 247.) Petitioner moves
24 to stay the current briefing schedule for the motion for evidentiary hearing and adopt it
25 as the briefing schedule for Petitioner's motion for a stay in light of the recent Supreme
26 Court decision in Hall v. Florida, ___ U.S. ___, 2014 WL 2178332 (12-10882, May 27,
27 2014). For good cause shown, Petitioner's request to reset the briefing schedule is
28 **GRANTED.**

Petitioner has also filed an Application for a Stay in the Federal Habeas Proceeding in order to seek review of the “Atkins [v. Virginia], 536 U.S. 304 (2002)] claim,” Claim 11¹ [“Atkins claim”] of his First Amended Petition (previously raised in the California Supreme Court as Claim 3 of his state habeas petition in Case No. 156846). (See ECF No. 246.) Therefore, Respondent’s Answer/Response to the Application is due on or before **Friday, July 11, 2014**, and Petitioner’s Reply is due on or before **Friday, July 25, 2014**. In the remainder of the briefing to be submitted, the parties shall specifically discuss:

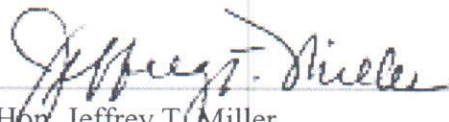
1. The impact of Hall, if any, on Petitioner’s Atkins claim - particularly, whether Hall has an impact on an analysis of Petitioner’s claim in light of California Penal Code section 1376 and the California Supreme Court’s decision in In re Hawthorne, 35 Cal. 4th 40 (2005), given that in Hawthorne, like Hall, the Court declined to adopt a specific IQ cutoff, stating that “a fixed cutoff is inconsistent with established clinical definitions and fails to recognize that significantly subaverage intellectual functioning may be established by means other than IQ testing.” Id., 35 Cal. 4th at 48; and,

2. The impact of Rhines v. Weber, 544 U.S. 269 (2005), if any, on Petitioner’s request for a stay.

Accordingly, the Court’s May 12, 2014 Order (see ECF No. 244), setting forth a briefing schedule as to Petitioner’s request for an evidentiary hearing or other evidentiary development, is **STAYED** pending further order of the court.

IT IS SO ORDERED.

DATED: June 20, 2014


Hon. Jeffrey T. Miller
United States District Judge

¹ In the Application for a Stay, Petitioner states that the Atkins claim is Claim 16 of the First Amended Petition. (See ECF No. 246.) However, upon review of the First Amended Petition, Petitioner raises an Atkins claim as Claim 11 (while Claim 16 raises a claim of instructional error). (See ECF No. 215.)